

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP (FC).No. 263 of 2015 (R)

PETITIONER(S)/PETITIONER:

MARYKUTTY, AGED 57 YEARS,
W/O.VARKEY, CHITHRA BHAVAN, ANIKADU.P.O.,
PALIAKATHODU KARA, KOTTAYAM.

BY ADV. SRI.MANU ROY

RESPONDENT(S)/RESPONDENT:

JYOTHI PAUL, AGED 32 YEARS,
S/O.PAUL, PALAMATTATHIL HOUSE, IRUMALACUP KARA,
KONNATHADY VILLAGE, UDUMBANCHOLA TALUK, IDUKKI-685 571.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

:2:

OP (FC).No. 263 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1	TRUE COPY OF E.P.34/15
EXT.P2	TRUE COPY OF COMPROMISE PETITION DATED 30-04-2014
EXT.P3	TRUE COPY OF TREATMENT CARD DATED 23-02-2015
EXT.P4	TRUE COPY OF THE CERTIFICATE DATED 18-02-2015
EXT.P5	TRUE COPY OF ADMISSION CARD OF CLUNY NURSERY SCHOOL
EXT.P6	TRUE COPY OF PETITION FILED AS G.O.P.NO:222/2015
EXT.P7	TRUE PHOTOCOPY OF THE RETURN FLIGHT TICKET
EXT.P8	TRUE COPY OF COUNTER AFFIDAVIT DATED 05.05.15
EXT.P9	TRUE COPY OF ORDER DATED 05-05-2015
EXT.P10	TRUE COPY OF ORDER DATED 12-05-2015.

RESPONDENT(S)' EXHIBITS

: NIL

//True Copy//

P.A. to Judge

C.K. ABDUL REHIM &

K. RAMAKRISHNAN, JJ.

O.P.(F. C.) No.263 of 2015

Dated this the 22nd day of June, 2015

JUDGMENT

K. Ramakrishnan, J

Maternal grand mother of the minor child has filed this petition, challenging the orders passed by the court below in E.P.No.34/2015 in O.P.No.854/2013, seeking interference of this court, invoking the supervisory jurisdiction under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner is the grand mother of Aldrin Jyothis, aged 3 years, who is the son of respondent and the daughter of the petitioner. Earlier O.P.No.854/2013 was filed in respect of custody of the minor in which Ext.P2 compromise was entered into, on the basis of which the custody of the child was given to the petitioner with visitorial right and interim custody during the period of the respondent coming to India from his work

place abroad. According to the petitioner as per the terms of the agreement, the arrangement will continue till the attainment of 3^{1/2} years of the child or he is admitted in the school. The child is suffering from acute ottism and undergoing treatment for the same. Now the respondent has come to India and he filed Ext.P1 execution petition for getting interim custody of the child. On that basis earlier Ext.P9 order was passed, granting interim custody till 12.05.2015. Again this was extended till 11.06.2015 and by a subsequent order again extended till 29.06.2015 as the respondent had reported before the court below that his leave has been extended till 30.06.2015. In the meantime the daughter of the petitioner already filed Ext.P6 Guardian O.P.No.222/2015 before the Family Court, Ettumanoor, seeking permanent custody of the child and that is pending, in which no interim orders have been passed. Handing over the custody of the child to the respondent for a long period will affect the treatment of the child and it will adversely

affect the health of the child as well. Further it is mentioned in the petition that as per the terms of the agreement, the period mentioned therein is already over and he is not entitled to further custody as per the terms of the agreement, as it has become infructuous and the child has been admitted to school. So the petitioner has no other remedy, expect to approach this court, seeking the following relief:

“It is humbly prayed that this Hon'ble court may be pleased to set aside Ext.P9 and P10 orders in Ext.P1 of the Family Court, Ettumanoor, granting interim custody of the minor to the respondent”.

3. Heard the counsel for the petitioner, as the case can be disposed of at the admission stage itself dispensing notice to the respondents.

4. The grievance of the petitioner is that each leave of the respondent has been further extended by three months. He is trying to extend the leave further by three months and there is possibility of the child being given to the respondent till the expiry of the extended period and

that will adversely affect the health of the child.

5. It is an admitted fact that the respondent is none other than the father of the child. In earlier proceedings namely O.P.No.854/2013 before the Family Court, Kottayam, at Ettumanoor, Ext.P2 compromise was entered into, on the basis of which, since both the mother and father were working abroad, considering the age of the child, the custody of the child was given to the petitioner herein with visitorial right to the father, whenever he comes to India and during that period, the custody will have to be handed over to him. On the basis of Ext.P2 the above O.P. has been disposed of. Since he came to India and the custody could not be obtained, he filed Ext.P1 for execution of that order. It is on that basis, Ext.P9 and P10 orders have been passed. It is also seen from the documents produced by the petitioner herself that the mother of the child has already moved the Family Court by filing G.O.P.No.222/2015, seeking permanent custody of the child

and she did not move any petition for interim orders seeking modification of the terms of agreement entered into between the parties as per Ext.P2. So under the circumstances, we do not find any reason to interfere with the orders passed by court below at this stage. However, if the petitioner /mother of the child raises the objection regarding further extension or the custody of the child to the respondent, then the Family Court is directed to consider her objections and then pass appropriate orders in accordance with law.

With the above direction and observation, the petition is disposed of. Office is directed to communicate this order to the concerned court, immediately.

Sd/-

C.K. Abdul Rehim, Judge

Sd/-

K. Ramakrishnan, Judge

// True Copy //

P.A. to Judge